Agricultural Labor Under the Old Age Insurance and Unemployment Compensation Titles of the Federal Social Security Act.

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A. The Question of Coverage.

Agricultural laborers are among the wage earners most in need of protection against unemployment and dependent old age. Low wages and intermittent employment frequently combine to make individual savings difficult. No program for economic security, therefore, can be said to be reasonably complete unless some degree of protection is given such workers. It has been established that agricultural workers stand at the very bottom of the economic scale among wage earners. Yet, traditionally and systematically they have been denied the equal protection of the labor laws. Their exclusion from the Federal Social Security Act of 1935 was another example of this denial of equal protection.

But even if the Act did not specifically exempt agricultural labor from the unemployment compensation provisions, the great majority of farm wage workers would still be excluded by numerical exemption which makes the law inoperative for employers of less than a stipulated number of employees. Similarly, if they were not already excluded from the old age insurance provisions, many years would have had to elapse before the average farm laborer could have accumulated the minimum $2,000 earnings required to become eligible for benefits under

the Federal Social Security Act of 1935. 1/ In the case of unemployment compensation, the Act covers only employers of eight or more workers for 20 or more days, each day being in a different calendar week. In January 1935, the census reported only 16,840 farms employing this minimum number of workers; that is, only about one out of every 60 farms in the country which employs any labor. The total number of agricultural laborers employed by these farms aggregated about 290,000, or only about 18 per cent of the total number of

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1/ The amended Act of 1939 eliminates this minimum earnings requirement. It establishes, however, other qualifications which a great number of agricultural workers, if not all of them, would find even more difficult to meet, if they were not already excluded, than was the case prior to the change. Thus, to be fully insured under the present Federal old age insurance law, an individual must satisfy either of the following two requirements:

(a) He must have earned at least $50 in wages in each of 40 calendar quarters, or

(b) At least $50 in wages in each calendar quarter in at least half as many of such quarters as there were calendar quarters after the year 1936 or after the quarter in which he attained the age of 21, whichever year is later, and prior to the quarter in which he attained the age of 65 or prior to the one in which he died, whichever occured first; he must have earned, also, $50 in each of a minimum of six calendar quarters.

hired laborers on all farms.[1/]

As in the case of the exclusion of agricultural laborers from other forms of legislative protection, difficulties of administration were advanced as the major argument to bar them from the Federal Social Security Act. It was alleged, for example, that small farm employers would find it hard to keep satisfactory payroll records for purposes of tax collection especially where perquisites constituted a substantial portion of the wages paid to farm hands. Even if such records were kept, it was argued, collection of taxes would be arduous and expensive in view of the employment of farm labor in rural sections situated considerable distances from commercial centers. It was further pointed out that the migratory-casual farm worker with his short-term job and frequent movement across State lines, could be handled administratively under an insurance plan only with great difficulty - if satisfactorily at all.

It is hard to believe that the Committee on Economic Security,

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1/ Since January is the month of lowest farm employment, these figures understate the wage-working agricultural population on these farms, But even in August, the peak month of agricultural employment, it was estimated that the number of farm laborers employed on farms of eight or more workers represented only 20 per cent of the total number of hired laborers on all farms. It should be noted, also, however, that a large portion of all hired farm labor is engaged on farms hiring a substantial number of laborers per farm. Such farms are located in a relatively few States. Thus, for example, as much as 68 per cent of all farm laborers working for wages in Arizona in January in 1935 were employed on farms with eight or more hired workers. In Louisiana, the proportion was 48; in Florida, 45; In California, 42 per cent and in Arkansas, 37 per cent. On the other hand, the proportion of all farm wage laborers employed on farms with eight or more hired workers was very small in the following regions: New England, 15 per cent; East South Central, 12 per cent; Middle Atlantic, 10 per cent; East North Central, 5 per cent; and West North Central, 4 per cent. See J. T. Wendzel, "Distributien of Hired Farm Laborers in the United States," Monthly Labor Review. U. S. Department of Labor, Sept. 1937.

appointed by the President in 1934 to make recommendations for a Social Security program in the United States, did not consider all these arguments. Yet it "felt that agriculture should not be excluded as an industry - that the large agricultural operations should be covered." 1/ In the end, however, Congress hesitated to include any agricultural wage workers in what it considered a new social experiment.

It appears, however, that in excluding agricultural workers from the Federal Social Security Act, Congress did not intend this exclusion to be permanent. It charged the Social Security Board with "the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old age provisions, unemployment compensation--- and related subjects." 2/ In accordance with this Congressional mandate, the Board continuously appraised the operation of these provisions in the Act for which it was given administrative responsibility. It conducted extensive studies with a view toward establishing effective methods of providing greater social security for an increasing number of workers.

1/ Testimony of Edwin E. Witte, Chairman of the President's Committee on Economic Security, at hearings before the Senate Committee on Finance, S 1130, 74th Cong., 1st Session, Jan.-Feb., 1935, p 219.

2/ Social Security Act of 1935, Public Act No. 271, 74th Congress, Title VII, Section 702.

After three years of study and experience, the Board submitted a report to Congress and to the President in which it took the following position: 1/

> "It is . . . recognized that the complete inclusion of employees engaged in agricultural labor is fraught with great administrative difficulties. However, the Board believes that the inclusion of large-scale farming operations, often of a semi-industrial character, probably would reduce rather than increase administrative difficulties."

Accordingly, the Board recommended "that the language of the present exception relating to 'agricultural Labor' (under the old age insurance and unemployment compensation titles of the Act) be modified to make it certain that this exception applies only to the services of a farm hand employed by a small farmer to do the ordinary work connected with his farm." It further recommended that "with a reasonable time allowed before the effective date, the 'agricultural labor' exception be eliminated entirely." 2/

At about the same time, similar findings and recommendations were made by an Advisory Council on Social Security appointed in May 1937 by the Senate Committee on Finance and the Social Security Board. This Council, whose task was to study the advisibility of amending the 1935 Act for the purpose of extending old age insurance to groups which up

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1/ Proposed Changes in the Social Security Act. A Report of the Social Security Board to the President and to the Congress of the United States, January 1939, p 9, also pp. 16-17. See also testimony of Arthur J. Altmeyer, Chairman, Social Security Board, Hearings before the Committee on Finance, U. S. Senate, 76th Cong., 1st Sess., on H. R. 6635, p. 17.

2/ Ibid. pp. 9 and 17.

to that time were excluded [1], reported as follows:

> Recent studies indicate that the additional cost of extending the coverage of the system (to farm wage workers)[2] will be considerably less than originally estimated since a large number of such workers are already coming under the system through employment in covered occupations on a seasonal or part-time basis. Intermittent coverage of this character is not only unsatisfactory in the benifits afforded but is a factor of uncertainty in financing the program.

Accordingly, the Council stated that the coverage of farm employees under the Federal Old Age Insurance Program was desirable, and recommended that it take effect, if administratively possible, by January 1, 1940.[3]

Despite these recommendations, Congressional amendments to the Social Security Act in 1939 failed to include not only the services performed on the large-scale industrialized farms, but by broadening the definition of the term "agricultural labor", exempted an estimate of 600,000 to 700,000 additional persons[4] engaged in the commercial harvesting of crops or in processing, packing, packaging and otherwise preparing of farm products

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1/ Final Report of the Advisory Council on Social Security. December 10, 1938, Document No. 4, 76th Cong., 1st Sess., January 5, 1939, p.23.

2/ Also referred to domestic employees.

3/ Final Report, etc., op. cit., p.22.

4/ Estimates of the Social Security Board.

for markets which formerly were covered under both the old age insurance and unemployment compensation provisions.

B. Interpretations of the Provisions of the Social Security Act of 1935 Affecting Agricultural Labor.

Under the Federal Social Security Act of 1935, payment of old age insurance benefits to qualified individuals attaining the age of 65 in certain employments was provided in Title 11. The taxes imposed on employers and employees with respect to these employments were stipulated in Title V111. Taxes on employers of eight or more persons in certain employments for financing the payment of unemployment compensation benefits were fixed in Title 1X.

The defination of the term "employment" in these titles was almost identical and each of them excluded "agricultural labor" from the meaning of that term. The term "employment" was defined as "any service, of whatever nature, performed within the United States by an employee for his employer, except (among others) agricultural labor."[1/]

The term "agricultural labor", however was not defined anywhere in the Act until it was amended in August 1939. For over three

1/ Public Act No. 271 (Social Security Act of 1935), 74th Congress, N. R. 7260, Title 11, section 210 (b); Title V111, section 811 (b); and Title 1X, section 907 (c)

years, therefore, this term had to be defined by the Bureau of Internal Revenue and the Social Security Board for their administrative purposes.[1] Accordingly, the Bureau prepared and announced, in February 1936, and the Board announced in 1937, the following definition which became applicable to the old age insurance and unemployment compensation titles of the Act:[2]

> The term "agricultural labor" includes all services performed -
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> (a) By an employee, in connection with the cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of livestock, bees, and poultry; or
>
> (b) By an employee in connection with the processing, packing, packaging, transporting, or marketing, of articles from materials which were produced on a farm;

1/ The Bureau of Internal Revenue was designated in the Act to collect the employment taxes and hence was faced with the task of passing on their applicability. The Social Security Board, charged with the administration of the Old Age Insurance program, had to certify claims as they came up. For the most part, mutual consultation and agreement was reached by the two agences in defining the term "agricultural labor."

2/ Social Security Board, Federal Old Age Benefits Under Title 11 of the Social Security Act. Regulations No. 2, article 6; U. S. Treasury Department, Bureau of Internal Revenue, Employees' Tax and the Employer's Tax Under Title V111 of the Social Security Act. Regulations 91, article 6; and Excise Tax on Employers under Title 1X of the Social Security Act. Regulations 90, article 206 (1).

> Such services do not constitute "agricultural labor", however unless they are performed by an employee of the owner or tenant of the farm on which the materials in their raw or natural state were produced, and unless such processing, packing, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.
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> (c) As used herein the term "farm" embraces the farm in the ordinary accepted sense, and includes stock, dairy, poultry, fruit and truck farms, plantations, ranches, ranges, and orchards. Forestry and lumbering are not included within the exception.

From this definition, it appears that the Bureau and the Board interpreted the intent of Congress to be the exclusion from the operation of the Act of the ordinary type of farm field labor employed in the growing, cultivation and harvesting of farm products. They further interpreted that intention to be the exclusion of workers who processed, packed or otherwise propared farm products for the market when the following two conditions were met: (1) Such services had to be performed by an employee of the owner or tenant of the farm on which the materials in their raw or natural state were produced; and (2) they had to be carried on as incident to ordinary farming operations and not of the nature of manufacturing or commercial operations.

To clarify still further the conception of the term "agricultural labor", the Bureau of Internal Revenue, in one of its rulings, in April 1937, described the type of agricultural services which were excepted from the tax provisions of Titles VIII and IX. Those that fell under subdivision (a) of the definition were as follows:[1/]

1/ Treasury Department, Bureau of Internal Revenue, Internal Revenue Bulletin, C. B., 1937-1,397.

1. Labor, employed on the farm by the owner or tenant thereof, involved in carrying on directly the services connected with the cultivation of the soil, the raising and harvesting of crops, or the raising, feeding or management of livestock, bees and poultry.

2. Labor employed on the farm by the owner or tenant thereof, incidental and necessarily an adjunct to the above services, such as work involved in hedging, ditching and the repair of fences on the farm.1/

3. Farm manager or superintendent, employed on the farm by the owner or tenant thereof, engaged in the direct performance or supervision of services which of themselves constitute "agricultural labor".

Under subdivision (b) of the definition, the following types of border line agricultural services were to be exempted.2/

1. Employees who perform the agricultural field services of cultivating the soil, harvesting the crops, and feeding or managing livestock, bees and poultry, but who also perform services in connection with the handling of farm products, such as processing, packing, packaging, transporting or marketing.

2. Labor which handles farm products with equipment and methods which are dissimilar to the equipment and methods used in like operations by persons admittedly engaged in commercial or manufacturing operation.

3. Employee who handles products produced on the farm of his own employer and who handles products on a place located on the farm.

4. Employees who handle farm products sold exclusively at wholesale.

1/ Services performed by certain class of employees on the farm of the owner or tenant thereof, such as bookkeepers, stenographers, carpenters, mechanics or engineers, were not to be considered as "agricultural labor".

2/ Op. cit., C.B., 1937 - 1, 397.

5. Labor which is employed in the particular type of farming with respect to which handling operations are customarily performed.

6. Labor engaged in handling farm products on farms with capital invested in equipment for such purposes not constituting the greater part of the investments in the enterprise as a whole.

The Bureau specifically stated, however, that before any agricultural processing or other preparatory services could be interpreted as conclusively constituting "agricultural labor" within the meaning of the term in Titles VIII and IX and in subdivision (b) of the definition, all, not one, of the above-mentioned factors were to apply in any one case.

Finally, the Bureau stipulated that if an employee during a certain period rendered services which constituted "agricultural labor" and during other periods rendered services which constituted covered employment, the two services, if substantial, were to be segregated on the basis of the time during which each type of service was rendered. If the period of time devoted to each type of service was substantial and if the agricultural services could not be segregated, both services were to be considered covered employment.[1/] Where, however, an employee, during certain periods, rendered services which constituted "agricultural labor" and, during other periods, rendered services which constituted "employment", and one type of service was merely incidental in measure of time to the

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1/ Thus, if an employee concurrently performed two types of services one of which, if separate and distinct as to time of performance, would constitute, "agricultural labor" and the other, covered "employment", the entire services were classified as "employment". Op. cit., C. B., 1937 - 1, 397.

other, then even though it was possible to segregate the one type of service from the other, the incidental service could be disregarded in determining whether the employee was engaged in "agricultural labor" or in covered employment. 1/

C. Rulings of the Bureau of Internal Revenue Regarding Coverage of Agricultural Workers Under Unemployment Compensation and Old Age Insurance.

Below is a review of the interpretation given by the Bureau in several specific instances falling under these definitions, rules, and regulations, These interpretations supplied only to the cases which arose, but they also served as precedents in other cases where the conditions were similar.

During the years, 1936 through 1939, which preceded the effective date of the amendment of the Social Security Act, the Bureau of Internal Revenue interpreted the following services as "agricultural labor", and therefore exempt from the taxing provisions of the Social Security Act relating to unemployment compensation and old age insurance: flower growing; growing mushrooms; planting, cultivating and growing of tung trees and harvesting tung nuts; growing of vegetables in greenhouses; all these services were, and had to be, performed on a farm before they were

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1/ Thus, if an individual employed on a farm was engaged principally in repairing farm machinery and equipment but incidently engaged in the performance of services in connection with the cultivation of the soil, his entire services were to be treated as having been performed in "employment", the incidental agricultural services being disregarded. On the other hand, if an individual employed on a farm was engaged principally in the performance of services in connection with the cultivation of the soil but incidentally repaired farm machinery and equipment, his services were to be treated as "agricultural labor", the incidental non-agricultural services being disregarded. Op. cit., C. B., 1937 -1,397.

held to be agricultural labor. In fact, it was by ruling that nurseries, greenhouses and certain open fields were "farms" that it was partly possible to declare the services attached thereto as "agricultural labor". In addition, the following services were deemed to be "agricultural labor" largly on the basis of the fact that the farm products which were handled in preparing them for market were produced on the farm owned or tenanted by the employer: tobacco raising and curing, packing of lettuce, cleaning, packing and shipping seeds; supervising work of agricultural laborers; clearing of timberland for agricultural purposes; drying of apricots; and raising, harvesting, packing and transporting water cress.

In the case of flower growing on farms, the Bureau ruled that services performed in these operations by employees of nurserymen and flower growers were similar to those performed by ordinary farm labor engaged in growing foods. It construed, that "agricultural labor" included floricultural or horticultural labor, the latter being said to be, among other things, as transient and migratory as the ordinary farm labor.[1/] Similarly, the services performed in the growing of vegetables on farms, it was ruled, constituted "agricultural labor" irrespective of whether such vegetables were grown in open fields or in greenhouses.[2/]

1/ Treasury Department, Bureau of Internal Revenue, Internal Revenue Bulletin, C. B., 1937 - 2,409. This decision was a reversal of a previous ruling in which the Bureau ruled that such services did not constitute "agricultural labor" within the meaning of its regulations because: (a) labor among flower growers is far more stable than in the case of rural farming; (b) flower growing establishments are located in and near cities to a far greater extent than is true of ordinary farms. Hence stated the Bureau, floricultural labor was much more similar to industrial labor than to farm labor, and no problem existed in applying the employment taxes on these workers or their employers. See Ibid. C. B., 1937 - 1, 468.

2/ Ibid, C. B. 1937 - 2, 412.

Passing upon the services associated with the growing of mushrooms, the Bureau made a distinction between such operations performed "on a farm" in the ordinary accepted sense of the term and those performed off the farm. In declaring the growing of mushrooms as "agricultural labor", the Bureau stated that it saw no valid distinction between the growing of products in greenhouses located on a farm and the growing of products, such as mushrooms, in cellars, caves, barnes, etc., located on the farm.[1/] However it held that where these operations were carried on in natural caves located not on a farm but within the corporate limits of a city and when the soil and fertilizer used in the caves were hauled from various locations, the exemption did not apply.[2/]

Again, in the case of services connected with the packing of lettuce, the drying of apricots and the curing of tobacco on the farm, the Bureau ruled that they constituted "agricultural labor".[3/] The ruling in these cases was governed, in part, by the facts that they were (a) incidental to the farming operations, and (b) were performed by the employees of the owner or tenant of the farm on which the materials in their raw or natural state were produced.[4/] On the other hand, the services

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1/ Ibid, C. B., 1937 - 2, 417. This ruling was a reversal of an earlier one in which the services performed by individuals in growing and processing mushrooms were said not to constitute "agricultural labor" within the meaning of the regulations. In this case, the Bureau stated that mushrooms were not grown under field conditions such as characterized normal farming operations. See Ibid, C.,B., 1937 - 1, 401.

2/ Ibid,C. B., 1938 - 1, 432.

3/ See Ibid, C. B., 1937 - 2,414; C. B., 1938 - 2, 307; and C. B., 1937 - 2, 412.

4/ In the case of lettuce packing, the operations were not conducted on the farm, but the fact that the same employees cultivated, harvested and packed the lettuce proved one of the decisive factors in the decision. See Ibid, C. B., 1937 - 2, 414.

performed in the packing of fruit by employees of a cooperative marketing association of producers were not exempted under the unemployment compensation and old age insurance titles of the Act. The Bureau ruled that "even though the products, in connection with which the services are performed, were produced by the members of the association," the services of such employees were not excepted as "agricultural labor" since the individuals were employees of the association and not of a particular producer who was the owner or temant of a farm. 1/

When the ruling concerned services performed by employees in dairy farming, the Bureau considered the various independent operations connected therewith as a basis for its decision.

Thus, in the case of a farm dairy company which owned and operated (a) farms on which it raised feed and cattle, (b) a creamery to which it shipped its milk for pasteurization, bottling and processing of other dairy products, and (c) retail and wholesale outlets for its products, the Bureau ruled that the services performed by employees of the company with respect to the raising of crops and the feeding and milking of cows came within the exception provided for agricultural labor, but those performed in connection with the processing, transportation and marketing of dairy products did not constitute excepted service under the taxing provisions of Titles VIII and IX of the Social Security Act. 2/ In other words, the services rendered on a dairy farm which were accorded exception from unemployment compensation and old age insurance coverage were those connected

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1/ Ibid, C. B. XV - 2, 411.

2/ See Ibid, C. B., 1937 - 1, 404 and 1939 - 1, 294.

with the raising, feeding or management of livestock. The exception also extended to services connected with processing, transportation and marketing of articles from materials produced on the farm when such operations were carried on as incidental to ordinary farming as distinguished from manufacturing or commercial operations. The exception did not apply, however, to the pasteurizing, bottling, delivery, and sale of milk or the processing, transporting and marketing of other products in connection with the commercial operation of a dairy.

Similarly, the Bureau's ruling on whether services performed in theshing grain constituted "agricultural labor" or commercial labor was governed by interpretation whether they represented agricultural or commercial operations. That is, the nature of the service for coverage purposes was determined largely by its industrial classification. Thus, the Bureau stated that threshing of grain was an agricultural process when it was carried on by a farmer on whose farm the grain was produced and when the service performed in connection therewith were rendered by employees of such a farmer. Accordingly, it ruled that such services were "agricultural labor". On the other hand, the Bureau interpreted the threshing of grain as a commercial process when such services were performed by individuals who were not in the employ of the owner or tenant of the farm upon which the grain is produced.[1/] It ruled, therefore, that

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1/ In threshing grain, the threshing machines are owned and operated frequently by persons other than the owners or tenants of the farms on which the grain is produced. In such cases, the threshing services performed are rendered by employees of the owner of the threshing machines who contracts with the farmers to thresh the grain for a fixed fee. The owner of the machines may be a contractor or a cooperative group or association of farmers.

such services, whether performed by employees of an association of farmers or by employees of any person other than the owner or tenant of farm on which grain was produced, did not constitute "agricultural labor". 1/

The Bureau of Internal Revenue also held that while services performed by ordinary farm laborers employed on the farm in connection with repair and maintenance operations of farm properties constituted "agricultural labor", those performed by engineers, carpenters, plumbers, cement finishers, painters, brickmasons, welders, surveyors, electricians and others employed on the farm, whose callings are not closely connected with agriculture, in connection with maintenance and operation of farm properties, did not constitute "agricultural labor". 2/

Finally, the Bureau ruled that another group of border line services did not constitute "agricultural labor" on the ground they represented manufacturing and commercial operations rather than operations connected with ordinary farming. These services were as follows: sugar cane processing, cotton ginning and rice milling, production of maple syrup and maple sugar, 3/ commercial chicken hatching, 4/ crushing of grapes and other processes of operation in the production of wine, and the growing, harvesting and processing of crude gum from which turpentine and rosin are de-

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1/ See Ibid, C. B. 1939 - 1, 295

2/ See Ibid, C. B., 1939 - 1, 298

3/ Ibid, C. B., 1937 - 2, 408

4/ Ibid, C. B., 1937 - 1, 397.

rived.1/ In the case of sugar cane processing, cotton ginning, rice milling, and the crushing, etc. of grapes in the production of wine, the Bureau ruled that employees engaged in these services were not agricultural workers irreepective of whether the raw products were grown on the processors' own land or purchased from other growers.2/

D. Rulings of the Social Security Board Regarding Coverage of Agricultural Workers Under Federal Old Age Insurance.

The Social Security Board, alse had to determine whether certain border line services constituted agricultural employment within the meaning of the old age insurance title of the Federal Social Security Act and within the meaning of its definition of the term "agricultural labor".3/ The opinion of the Board, as those of the Bureau of Internal Revenue, applied only to the cases which came to it for decision. They were not to be accepted as universal although they were to act as precedents where the circumstances were similar.

Thus, the Board ruled that under Title 11 of the Act, the following services constituted "agricultural labor" and consequently excepted from coverage; commercial growing of flowers and vegetable plants in nurseries located in the field or in greenhouses situated on the farm of which the employer was the owner or tenant;4/ the growing and picking

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1/ Ibid, C. B. 1937-1, 397.

2/ See Ibid, C. B., 1937 -1, 471; C. B., 1937-1, 403 and C. B., 1937-1, 402.

3/ Social Security Board, Federal Old Age Benefits Under Title 11 of the Social Security Act. Regulations No. 2, Article 6; also see supra, pp. 7-8.

4/ Opinions of the General Counsel to the Bureau of Old Age Insurance; Numbers 4484, 2892, 2658, 1779A, 1568 and 4486, 2999.

of mushrooms;[1] and the services connected with cleaning of flower seed in warehouses located on a farm of which the employer was owner or tenant, and on which the seeds were grown.[2]

In the case of the services connected with the cleaning of seeds, the Board distinguished between such operations performed by employees of two different seed companies. Each of these companies owned warehouses located on its farm where the operations were performed. But one of them grew all the seeds on its farm and its employees performed only cleaning operations. These services, the Board ruled, constituted "agricultural labor" within the purview of Title 11 and within the meaning of its definition of that term. The other company grew only 75 per cent of the seeds which its employees cleaned, and besides they also packed and shipped the seeds from the warehouse. These services, the Board ruled, did not constitute "agricultural labor" but represented covered "employment" under this title of the Act.[3]

In addition, the Board interpreted the following services as non-agricultural labor on the ground that they constituted manufacturing and commercial operations rather than ordinary farming: packing fruit for a cooperative marketing association of producers;[4] sugar cane pre-cessing;[5] production and processing of crude gum from which turpentine

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1/ Ibid, opinion number 1784A.

2/ Ibid, opinion number 3369.

3/ Ibid, opinion number 3369.

4/ Ibid, opinion nos. 1560 and 2191A.

5/ Ibid, opinion nos. 1291 and 2296A.

and rosin are derived.[1] Similarly, the service performed by individuals in connection with dairying,[2] sheep-shearing[3] and tobacco packing[4] in the cases which arose were classified as non-farm labor because they were found to be performed off the farm.

E. The Definition of "Agricultural Labor" in the Federal Social Security Act as Amended and Its Effect on the Coverage of Farm Wage Workers.

The Social Security Act as amended in 1939 continues the exemption of agricultural labor from its old age insurance and unemployment compensation provisions. By amendment, however, the Act now contains a definition of the term "agricultural labor". This definition which becomes effective January 1, 1940, includes not only the services formerly exempt from the Act as agricultural labor but also most of those which formerly were held not to constitute such labor and consequently were covered. Thus, "agricultural labor" now includes all services performed-

> "(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.
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> "(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other

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1/ Ibid, opinion no. 2453B.

2/ Ibid, opinion no. 1863.

3/ Ibid, opinion no. 2642.

4/ Ibid, opinion no. 1752.

debris left by a hurricane, if the major part of such service is performed on a farm.

"(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

"(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

"As used in this subsection, the term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards." 1/

Paragraph (1) of the definition of the term "agricultural labor" includes, as did formerly that of the Bureau of Internal Revenue and of the Social Security Board, all field labor performed on a farm directly in

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1/ Public Act No. 379 (Social Security Act Amendments of 1939), 76th Cong., 1st Sess., Title II (Federal Old Age and Survivor's Insurance Benefits), Section 209 (1), and Title VI (Amendments to the internal Revenue Code), Section 1426 (h) and 1607 (i).

connection with cultivating the soil, the raising or harvesting of any agricultural or horticultural commodity, including the raising, feeding and management of livestock, bees, and poultry. It also includes, however, the services of raising, feeding and management of fur-bearing animals and wildlife, which formerly were not specified in the Bureau's or Board's definition of that term and certain forms of which the Bureau of Internal Revenue ruled were not performed by agricultural labor.[1/]

Moreover, formerly field labor was exempt from the Social Security Act only if performed in the employ of the owner or tenant of the farm on which it was rendered.[2/] That is, according to the rulings of the Bureau of Internal Revenue and of the Social Security Board, farm workers employed by packing sheds and other processing establishments to harvest crops produced on farms of other growers came under the old age insurance and unemployment compensation provisions of the original Act. The amended Act, however, exempts these agricultural services on the farm regardless of whether or not they are performed by workers in the employ of the farm owner or tenant. Under the amended Act, agricultural laborers performing these services on the farm in the employ of any persons are exempt. Thus, for example, individuals engaged in growing, cultivating or harvesting operations performed on a farm but in the employ of a labor contractor or of a farm producers' cooperative marketing association or of a commercial

1/ Treasury Department, Bureau of Internal Revenue, Internal Revenue Bulletin, C. B., Xv-2, 412.

2/ The Federal Bureau of Internal Revenue also held that where the labor was employed by a marketing agent, it was agricultural labor, if the grower by contract appointed the marketing agent as the agent if the grower in employing the labor used to pick the fruit of the grower (See letter of the Treasury Dep't, July 27, 1937.)
Such an arrangement did not apply to field labor employed by a cooperative association even though the cooperative association provided in its by-laws or articles that the association was the agent of or trustee for the farmer member in handling the fruit and the funds realized therefrom.

establishment which processes or otherwise prepares farm products for market, are now, according to the language of the law, exempted from the old age insurance and unemployment compensation provisions.

This paragraph also continues the former exclusion of services performed in greenhouses and nurseries located on a farm in connection with the raising or harvesting of horticultural commodities, such as flowers, young fruit trees, ornamental plants and shrubs.

Paragraph (2) of the definition continues substantially the former exception of ordinary farm laborers in the employ of the owner or tenant or other operator of a farm who perform services in connection with the operation, management or maintenance of such farm and its tools and equipment, provided the major part of those services are performed on a farm. But the language of the definition now also permits carpenters, painters, irrigation engineers, bookkeepers, plumbers and other skilled or semi-skilled workers on the farm who perform such services to be regarded as agricultural labor.[1/] Formerly, such workers possessing a special trade, calling or occupation not closely connected with agriculture, employed on the farm by the farm owner or tenant in connection with maintenance and operation of farm properties, did not ordinarily constitute "agricultural labor",[2/] within the meaning of the Act.

Paragraph (3) extends the scope of the term "agricultural labor" to the following services performed by individuals in connection with certain specified farm products and operations which, hitherto, had been held, either in whole or in part, as not constituting agricultural labor,

1/ Exemption, however, will not extend to these services performed by such persons not in the employ of the owner or tenant of the farm such as, for example, employees of a commercial painting or engineering concern which contracts with a farmer to renovate or otherwise improve his farm properties.

2/ See Op. cit., C. B., 1939-1 298.

unless performed as incidental to ordinary farming; production and harvesting of maple sugar and maple sirup;[1] the raising and harvesting of mushrooms; the hatching of poultry; cotton ginning; and the growing and harvesting of crude gum and the processing of crude gum, spirits of turpentine and gum rosin.[2] Dairy farming and the threshing of grain are not specifically listed in this paragraph as services performed by agricultural labor. Previous rulings of the Bureau of Internal Revenue[3] have indicated that certain operations connected with these services were commercial and manufacturing in character and that others, were agricultural.[4] Pending the interpretation and ruling of the Bureau of Internal Revenue, it is difficult to predict the status of these services in the future with respect to coverage.

Prior to the new definition of "agricultural labor", the Bureau of Internal Revenue held that "the production of maple sirup and maple sugar does not involve a cultivation of the trees in the ordinary accepted sense, and that the processing of the sap into maple sirup and maple sugar is a manufacturing and commercial activity rather than an incident to ordinary farming operations."[5] It ruled similarly, that the raising and harvesting

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1/ The definition of the term "agricultural labor" does not cover services in connection with blending or other processing of such sugar or sirup with other products.

2/ Includes only those services performed in connection with the production or harvesting of crude gum (oleoresin) from a living tree and of the products processed from it by the orginal grower.

3/ See Op. cit, C. B., 1937-1, 404 and C. B., 1939-1, 295.

4/ See Supra, PP. 14-15.

5/ Op. cit., C. B., 1937-2, 408.

of mushrooms in caves located not on a farm but within the corporate limits of a city was not farming in the ordinary sense of the word.[1] The Bureau held, also, that cotton ginning, rice milling and sugar cane processing were not services which constitutes "agricultural labor" irrespective of the sources of the raw materials.[2] Finally, it interpreted commercial threshing of grain, commercial dairy farming operations, and the growing, harvesting and processing of crude gum in turpentine establishments as constituting services not of a farming but of a manufacturing and commercial character.[3]

Practically all of these services will now be excepted from the provisions of the Social Security Act whether or not they are performed on a farm and regardless of whether the persons performing them are in the employ of the owner or tenant of a farm.

Paragraph (4) defines as "agricultural labor" the services performed in the preparation, processing and transportation of any agricultural or horticultural commodities, provided they are executed as an incident to ordinary farming operations. Similar classification is assigned to services performed in the handling, drying, packing, etc., of fruits and vegetables, provided they are accomplished as an incident to the preparation for market.[4]

1/ Op. cit., C. B., 1938-1, 432.

2/ Op. cit., C. B., 1937-1, 471 and C. B., 1937-1, 403.

3/ Op. cit., 1939-1, 295; C. B., 1937-1, 404; C. B., 1939-1, 294 and C. B., 1937-1, 397.

4/ The provisions of this paragraph, however, have no applicability to service performed in connection with commercial canning or freezing, or in connection with any horticulture or agricultural commodity after its delivery to a terminal market for distribution for consumption.

In both cases tha concept of "agricultural labor" is broadened in conparison with that held formerly by the Bureau of Internal Revenue and by the Social Security Board. That is, these agencies formerly ruled that such services had to meet two conditions before being adjudged as "agricultural labor": a) They had to be carried on as incident to ordinary farming as ddistinguished from manufacturing or commercial operations; and b) they had to be performed by an employee of the owner or tenant of the farm on which the materials were produced in their raw or natural state.

Under the amended Act, the services connected with the preparation, processing, etc. of agricultural or horticultural commodities will now be held to constitute "agricultural labor" if only one of the former two conditions is met - they must be performed as incidental to ordinary farming operations. The waiving of the second requirment will now bring under the definition of the term "agricultural labor" the above services performed not only by the employees of a farmer, but also by those in the employ of a farmers' cooperative organization or group.[1/] The latter group of employees was formerly not considered as agricultural laborers, and were subject to coverage.[2/]

1/ These preparatory services are not excepted from coverage if the commodities were produced neither on the farmer's own farm nor on the farms of the members of a farmers' cooperative organization or group. Also, the services of stenographers, bookkeepers, clerks and other office employees in the employ of a farmers' cooperative organization or group, or commercial handlers are not exempted.

2/ See op. cit., C. B., Xv-2, 411; and Opinions of the General Counsel, to the Bureau of Old Age Insurance, Nos. 1560 and 2191A.

In the case of services performed in the handling, drying, packing, etc. of fruits and vegetables, both of the former requirments are eliminated in the present definition of "agricultural labor". These services now constitute "agricultural labor" and are exempt from the Act even though they are not performed as an incident to ordinary farming operations, and irrespective of whether they are performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities. 1/

1/ The broad exemption of these services makes it quite possible that office and clerical employees employed in fruit and vegetable packing establishments will also be excluded from the amended Act as "agricultural labor".